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Before the
Federal Communications Commission
Washington DC 20554

DEC 12 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 00-54
Tale of Allotments)	RM-9835
FM Broadcast Stations.)	RM-9907
(Mount Pleasant & Bogata, Texas))	

To: Allocations Branch, Mass Media Bureau

PETITION FOR RECONSIDERATION

Bogata Broadcasting Company ("BBC"), by its counsel and pursuant to Section 1.429 of the Commission's rules, hereby petitions for reconsideration of the *Report and Order* released October 27, 20900, in the above-captioned rulemaking proceeding (DA 00-2425).¹ On reconsideration by the Allocations Branch, BBC requests that the allotment of Channel 263A to Bogata, Texas, be rescinded. In support of this petition, the following is stated:

1. The Commission uniformly holds that it "will not allot a channel in the absence of an expression of interest" *Detroit, Howe and Jacksboro, Texas*, DA 00-2300, rel. October 11, 2000. The Commission recognizes that "[a]bsent an expression of interest, a newly allotted channel could lie vacant" *Santa Isebel, Puerto Rico and Christiansted, Virgin Islands*, 3 FCC Rcd. 2336, 2337 (1988).

2. In the instant proceeding, the only proposal which could be considered was that proposed in the Comments and Counterproposal filed by BBC May 15, 2000, in response to the FCC's Notice of Proposed Rule Making released March 24, 2000 (DA 00-646). No other

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¹65 Fed. Reg. 67655, Nov. 13, 2000.

comments were validly submitted in accordance with Sections 1.52, 1.415 and 1.420 of the FCC's rules.² No other comments and no reply comments were filed indicating support of any person other than BBC for an allotment to Bogata.³

3. Before the FCC released on October 27 its *Report and Order* herein, BBC's interest in pursuing the Bogata allotment proposed in its May 15 Comments and Counterproposal had begun to diminish, and discussions had commenced between it and Inspiration Media of Texas, Inc., looking toward a dismissal by BBC of the Bogata proposal, with Inspiration Media reimbursing BBC for its costs and expenses as permitted by the FCC's rules.⁴ The discussions between BBC and Inspiration Media were nearing conclusion when the *Report and Order* was released. Immediately after release of the *Report and Order*, BBC and Inspiration Media concluded their discussions with an agreement in principle which then led to a formal agreement, which is being submitted to the FCC for approval concurrently herewith. The agreement complies with Section 1.420(j) of the Commission's rules, and provides for reimbursement of BBC's legitimate and prudent expenses.

²A document titled "comments" was filed under the name of Broadcast Services, which failed to comply with the cited rules. Broadcast Services is not being served with this pleading because there is no address in the FCC's docket for this entity.

³The Commission gave Public Notice of BBC's counterproposal for allotment of 263A to Bogata June 23, 2000 (Report No. 2421), and provided a 15-day period thereafter for reply comments. No comments or reply comments were filed in response to this notice.

⁴Inspiration Media is acquiring the station operating on Channel 264C at Highland Village, Texas. In evaluating alternatives to the station's present transmitter site, Inspiration Media discovered the Bogata counterproposal and found that it would inhibit the use of a desirable alternative site, limiting its ability to improve the facilities of the Highland Village Station.

4. The Bogata allotment of Channel 263A would not be available for application until the Commission opened a filing window for potential auction participants, very likely not until late 2001 or early 2002.⁵ The present intention of BBC to not seek a construction permit for the Bogata channel makes it apparent that "the channel could lie vacant . . ."⁶ well after 2002. All that while, the Bogata allotment would serve to inhibit the improvement of Inspiration Media's station on channel 264C at Highland Village and, at the same time, block the allotment of Channel 263A to another community where there exists a present strong interest in starting a new local FM radio service. In *Santa Isabel, Puerto Rico, supra*, the Commission made clear that an allotment not supported by an expression of interest would not stand because "it could preclude additional or improved service elsewhere with no countervailing service benefit to the public." *Id.* at 2337.

5. In its statement submitted herewith, BBC states that it withdraws its expression of interest in the allotment of Channel 263A to Bogata and requests that the allotment be rescinded so that Channel 263A may be free for allotment elsewhere, contingent upon approval of BBC's reimbursement agreement with Inspiration Media. In keeping with the Commission's longstanding and consistent emphasis on the essentiality of a clear expression of interest to support a finding of the public interest in an FM allotment, the allotment of Channel 263A to Bogata should be rescinded.


⁵The first FM auction, including allotments made several years ago, is scheduled for February 21, 2001. See, *Public Notice*, DA 00-2171, rel. September 25, 2000.

⁶*Santa Isabel, Puerto Rico, supra*.

WHEREFORE, the Commission is urged to promptly review and approve the agreement between BBC and Inspiration Media submitted concurrently herewith, and to rescind the allotment of Channel 263A to Bogata.

Respectfully submitted,

BOGATA BROADCASTING COMPANY

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WITHDRAWAL OF EXPRESSION OF INTEREST

Bogata Broadcasting Company, the sole proponent of the allotment of Channel 263A to Bogata, Texas, hereby withdraws its expression of interest in that allotment. Bogata Broadcasting Company has no present intention of filing an application for that channel when the auction window opens. Therefore, and pursuant to Bogata Broadcasting Company's agreement with Inspiration Media of Texas, Inc., Bogata Broadcasting Company requests rescission of the allotment of Channel 263A to Bogata so that it is free for allotment elsewhere.

BOGATA BROADCASTING COMPANY

Signed and dated this 11th
day of December, 2000

By 